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Local public governance and administration for results

Intergovernmental governance and regimes

Note by the Secretariat

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Report on intergovernmental governance and regimes

Summary

The present report sets out the requirements that must be met in order to make the most of the strengths of representative democracy at the local level and from the intergovernmental perspective. It suggests that a careful balance of the competencies of local authorities and administrations together with a carefully balanced decoupling of local councils from State institutions grants financial power and autonomous self-government to municipalities. It also suggests that a representative democracy that relies solely on institutions legitimized by elections is under constant pressure of proving its legitimacy and that a well designed representative democracy is invested with a local governance system, which includes the specific advantages of additional legitimacy and cooperation with other actors.

I. Introduction

1. Representative democracy at the local level can, in the context of this paper, only be viewed in light of the theme of local governance for results, and not in an abstract way. One is reminded of the fact that "public governance" stands for "the steering process by which the sense of direction of society and the social capacity to carry out public intentions are built and defined".[1] This process includes not only State actors, but also Government, private corporations, civil society organizations and citizens, which interact with each other in different ways. Tension arises regarding the Government's role, which can be characterized by the following two extremes: on the one hand, it has been agreed that governance is not based on Government action alone, but also on other actors' initiatives, leading to joint action between Government and non-governmental actors. On the other hand, it has also been recognized that it is indispensable that the institutional-political dimension of governance is based on democratic institutions founded on free elections.

2. It may, theoretically speaking, be easy to assign the leading role, i.e. that of helmsman, to democratically elected institutions. However, who is the captain that makes the final decision as to what should be done, and who takes responsibility for this decision? A network that has evolved through the governance process is not suitable for assigning responsibility. Research on pilot projects has shown just how difficult it is to designate roles and tasks in a network-oriented governance process.[2]

3. The fact that public governance is not a process of autonomous network configuration, but outcome-oriented, is emphasized by the fact that governance exists for results. A definition of public results includes both "policy performance" and "democratic performance", wherein special emphasis is placed on a freely elected Government as a measure of good public results.[3]

4. Thus the essence is the role of representative democracy at the local level, both in its relationship with democratic institutions at the State level as well as its relationships with the professional local bureaucracy and local organizations, businesses, citizens and other actors within the multi-actor governance. The position of representative democracy at the local level is, in this respect, more difficult than representation at the national level. At such higher levels, interconnections and interdependencies are not as closely knit as for local representatives.

5. The status given to representative democracy at the local level in a particular national context depends very much on culture, tradition, values, social structure, and legal and administration systems; and thus it varies greatly. Nevertheless, a number of basic propositions can be derived from observing the numerous different contexts.

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[1] E/C.16/2011/2, para. 9.

[2] Inga Nyholm and Arto Haveri, "Between government and governance: local solutions for reconciling representative government and network governance", *Local Government Studies*, vol. 35, No. 1 (2009), p. 109.

[3] E/C.16/2011/2, para. 24.

II. Representative democracy at the local level

6. Firstly, the position of local representative democracy is fundamentally dependent on the level of autonomy granted to local bodies. As an example, both article 3 of the European Charter of Local Self-Government and article 3 of the draft World Charter of Local Self-Government, a joint initiative of UN-Habitat and the World Association of Cities and Local Authorities Coordination, refer to substantial self-government, which includes the right and the ability of local authorities to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. As part of the concept of real self-government, local representation of citizens is the core element: "This right shall be exercised by councils or assemblies composed of members freely elected".[4] Such self-administration is unthinkable without the financial autonomy of municipalities with respect to the national Government and without local representatives being able to take responsibility for decisions regarding the allocation of resources.[5] Having said that, too much autonomy at the local level can also be seen as a threat to the precedence that should be given to democratically established national priorities and as a danger to democratic institutions at the national level. For this very reason, local governments in some States are given only limited rights of self-administration and autonomy and the national Government makes all the major decisions, which means that those made by local representatives can, for example, be revoked and replaced. In this case, local councils can only determine and take responsibility for exercising local interests to a limited extent. It is possible that the autonomy and responsibility of a local government does not stretch as far as their citizens' local interests, for which a council feels responsible. They can feel inclined to have to rely on external actors, without being able to guarantee responsible local governance.[6] Therefore, a careful and clear allocation of responsibilities and authority between national and local democratic institutions is crucial for sound intergovernmental governance.

7. Secondly, the level of devolution is of importance with respect to how close the elected representatives are to the citizens they represent and the extent to which the elected representatives can actually recognize and represent their citizens' interests. This is very much dependent on the size of the State and how its different governmental levels are divided. In multilayered federalist States with a strong degree of self-administration, such as Germany, some regions have up to six elected representative bodies extending from the national level down to the lowest local level, each with its own autonomous decision-making responsibilities. In such systems, local councils play an essential role in the self-conception and local and regional identity of citizens. Personal contact with the elected representatives is of the utmost importance and the election of individuals is often more relevant than their political party affiliation. However, this is different for local council elections in large districts that were created with little consideration for ethnic and/or cultural traditions. It is therefore very important to find a balance between economies of

[4] Article 3 of the European Charter of Local Self-Government and of the draft World Charter of Local Self-Government.

[5] See United Nations Human Settlements Programme, *International guidelines on decentralisation and the strengthening of local authorities* (Nairobi, 2007).

[6] See Annette Christmas and Jaap de Visser, "Bridging the gap between theory and practice: reviewing the functions and powers of local government in South Africa", *Commonwealth Journal of Local Governance*, No. 2 (January 2009).

scale, which can be attained by having large local government districts and maintaining democratic values of representation.

8. Thirdly, the relevance of directly elected local councils is heavily influenced by the position of the authorities, including mayors and local administrators. In this respect, there are very different systems whose essential differences lie in the procedure for electing the mayor, i.e. whether he/she is elected by the citizens or by the local council, or whether he/she is given this position by the national Government; whether he/she is the sole person responsible for local administration or must adhere to orders handed down from above; whether he/she runs the local council or whether the council oversees the mayor from the outside; and whether the local council consists only of popularly elected representatives or if it also contains administrative staff who possess equal status and rights.[7] Each system has advantages and disadvantages that very much depend on one's perspective. Two examples: if one considers it essential to have a strong, professional administration that can fall back on the knowledge of the main national authorities, then one will favour a tight intergovernmental connection and, therefore, a dualistic system possessing both a mayor appointed by, and dependent on, the national Government and local representatives elected by the citizens. On the other hand, the role of local councils would be considerably increased in a system that strictly adheres to the principle of representation and would make the position of the mayor dependent on the council's decision.

9. The fourth aspect of the role of representative democracy at the local level is connected to this dual role of the local representatives elected by the citizens, who must represent both the interests of groups and citizens and those of the administration, meaning the responsibility for local services and local infrastructure. Should the council take responsibility for good administration in the municipality, councillors must have a high degree of specialized professionalism and be prepared to spend a lot of time becoming familiar with issues. In this system, other people may be required, as the main role of the councillors is seen as a representative one, i.e. spending a large proportion of their time talking to citizens and getting to know their interests and concerns. One sensible solution to this dilemma is to maintain the political role of the representatives and yet still enable them to make their own decisions regarding administrative issues that are important to the municipality. However, individual issues should be left to professional administrations, as they are the most qualified to deal with them.

10. In turn, the fifth aspect concerns the necessity to realize the particularly conceptual relevance of local representative democracy to contribute to an efficient, responsive, responsible administration that reduces poverty in practice. This means that local representation should not fall prey to national political parties, nor should elites be allowed to take control of the governance process. The representation of ethnic or social minorities in the elected bodies must be guaranteed. This requires actively educating citizens in democracy so that they can have at least a basic understanding of the functions and interaction of democratic institutions and can either develop a personal interest in representing the local community or at least be able to monitor their elected representatives. All documents concerning decisions

[7] See Timothy D. Sisk and others, *Democracy at the Local Level: The International IDEA Handbook on Participation, Representation, Conflict Management and Governance* (Stockholm, International Institute for Democracy and Electoral Assistance, 2001).

discussed in local council meetings must be made accessible to the public and councils should hold public meetings so that citizens may ask questions. A well-balanced representative democracy provides better protection against the tyranny of the majority than a pure direct democracy.

III. Local partnerships and forms of cooperation

11. It may be said that there is broad agreement that, irrespective of the central significance of representative democracy at the local level, there is a need for an extension of the scope of the public policymaking process beyond the institutions of the municipality. There are two perspectives: firstly, a participatory and inclusive approach to governance is indispensable for achieving the Millennium Development Goals: "it is increasingly clear that success will require an approach which redefines the relationship between the government and civil society".[8] Secondly, local government is increasingly stretching itself to the limits of its capabilities for several different reasons: limited financial resources; increasing demands to make more comprehensive improvements to the standard of living of citizens; and the limited ability of administrations to generate the knowledge, problem-solving skills and innovation required for new institutional arrangements. Although this necessity to draw on expertise outside institutionalized local government has been known for quite some time, discussion has almost exclusively focused on the topic of privatization.[9] Comparative empirical studies have shown, for example, that States with a strong central Government and weak municipalities have privatized local services on a much larger scale than States in which municipalities have a high level of self-government and far-reaching financial autonomy.[10] Even though approaches to the question of privatization still vary greatly from State to State, it has become clear that privatization alone cannot solve all the problems regarding the provision of public services at the local level and that comprehensive strategies beyond privatization must be developed.

12. One essential requirement for the development of such strategies is that all actors — the municipalities involved, institutions of civil society and private companies — should be aware of the goals of the cooperative endeavour as well as any goals specific to any one of the partners. As much as local governance tries to develop a control concept that includes all actors, this will not succeed if the goals and rationalities of the different parties are not clearly set out in advance.

13. Civil society organizations pursue the interests of the citizen of the municipality. It is their task to make citizens' interests heard when the citizens feel that their concerns are not being taken seriously enough by the local government. Given that they are in close contact with citizens, these organizations are often more fully aware of the nature of any problems, know those affected and have possible solutions that can be considered. Cooperation between civil society organizations and the local government should improve the awareness of the interests affected, as

[8] *Participatory Governance and the Millennium Development Goals* (United Nations publication, Sales No. E.08.II.H.5).

[9] Germà Bel, Robert Hebdon and Mildred Warner, "Local government reform: privatisation and its alternatives", *Local Government Studies*, vol. 33, No. 4 (2007), p. 507.

[10] Kimberley Fitch, "Water privatisation in France and Germany: the importance of local interest groups", *Local Government Studies*, vol. 33, No. 4 (2007), p. 589.

perceived by the given organizations. For the municipality, the cooperation provides knowledge of the citizens' interests and information that would be much harder to attain without the civil organizations' help. In addition, there are committed citizens in civil society organizations whose effort and dedication contribute to the development of concepts that can more adequately address the problems and find solutions, relieving the local administration of this burden. The inclusion of civil society organizations can allow the poorest and weakest in society to have a chance to make their voices heard. In this respect, it is also one of the strategies used in the pursuit of participatory governance.

14. The above-mentioned considerations should be met with general agreement worldwide. However, there are recognizable differences among different cultures concerning the understanding of the relationship between civil society organizations and the municipality. These very different approaches can be characterized as follows: one approach is that civil society organizations are the result of autonomous group formation processes driven by citizens and whose performance is based on their distance from the local government. In this instance, the governance task is to bridge this distance. The opposite approach maintains that it is the task of the local government to safeguard the interests of all segments of the population through the establishment of civil society organizations, the support of their activities and, if need be, the monitoring of these activities (municipality driven approach). For this approach, the governance task for the local government lies primarily in defining the relevant needs to be pursued through civil society organizations and the creation of more justifiable organizational structures for task fulfilment. Different variations lie between these two extremes.

15. The suitability of instruments for the organization of cooperation between civil society organizations and a municipality depends in the first instance on which of the above-mentioned understandings is adopted. However, regardless of these understandings, there are similar lessons that can be taken from different approaches to State governance. One aspect that has proven successful has been the establishment of centres that, on the one hand, support the work of civil society organizations and, on the other, provide a connection between the work of these organizations and the work of the municipalities. However, this interconnectedness must not be allowed to go so far as to see the civil society organizations being urged by the local government to take on the role of a "second government". Civil society and government are two different actors with different roles and a substantial distance should remain between them. In seeking to improve the living standards of citizens, the existence of a vibrant and active civil society is required for the innovative cooperation between the organizations of civil society and local government.

16. In addition, modes of cooperation can be described as the continual sharing of information between a given municipality and civil society organization, which is just as necessary as consultations, both bilateral as well as multilateral, including other civil society organizations. Equally important is the development of projects and implementation strategies as well as the evaluation of the results and the organization of common learning processes. Owing to the different divisions of power, these instruments should not be used only in an ad hoc manner when desired by the authorities, but should be part of a common road map that sets forth the details of the individual aspects of the cooperation as well as a time frame.

17. Partnerships between a municipality and businesses are a variant of public-private partnerships, which are usually understood as collaborations between the public and private sectors to improve the provision of public services. The challenges associated with these were outlined in the third session of the Committee of Experts on Public Administration: "both the State and the private sector have their distinct and mutually respective spheres of interest and activities and that even in market economies the private sector alone cannot be relied on to deliver all developmental needs ... What is crucial is to find out the right role for the right partner and to find a strategic framework".[11] One of the main tasks is to ensure that the interests of the municipality and of citizens are not dominated by the economic interests of companies while at the same time ensuring that the specific advantages of economic rationality are not lost by adhering too strictly to the principle of public welfare. Public-private partnerships can be understood as a systematic governance strategy that spans the boundaries between market and State, especially at the local level. As a hybrid control strategy it has the strategic potential to promote innovation and development, which can be used by the public sector to improve the efficiency and effectiveness of services fulfilling public welfare needs.

18. Cooperation between two or more municipalities may be established in order to achieve economies of scale or because the individual municipalities are too weak to ensure a satisfactory level of performance. One common problem is that cooperation between municipalities is often engaged in for the primary purpose of preventing forced mergers of the municipalities. Such cooperation can take on very different appearances: the drawing-up of a contract that stipulates that one municipality render services to the citizens of another municipality; the mutual construction and use of infrastructure and amenities; and the establishment of joint organizations and informal cooperation. The problem for the concept of comprehensive local governance is that cooperation between municipalities can compete with other actors, and not always in a way that is fair. If one disregards the question of mergers, the alternative to cooperation with another municipality, if one is unable to provide a service on one's own, would be to enter into a partnership with private companies. Cooperation between municipalities can, therefore, restrict a company's opportunities and distort the market.

19. For the complementary and mutual interactions of different actors among themselves and with municipalities to result in an improvement in the involvement and living standards of citizens, the way in which the different elements can be integrated together has to be clarified. An unrelated juxtaposition of public and diverse private sector performance processes does not typically lead to positive outcomes; rather, the processes may neutralize each other or combine to produce negative synergies. Nevertheless, a hierarchical governance structure is generally not able to coordinate the different actors through institutional arrangements. Local governance is in its essence, typologically, network-governance, which is based on trust, information, communication and reciprocity. This, however, does not change the fact that conceptualizing local governance as self-regulating network-governance is, while an interesting approach in theory, one that only seldom works in reality.

20. With respect to the question as to which authority should administer a network-governance structure, there is only realistically one answer: only the local government possesses the necessary democratic legitimacy to be able to take a long-

[11] E/C.16/2005/5, para. 19.

term perspective and define relevant policy goals for the well-being of the citizens of the municipality, as well as to utilize the interaction of the different interests and stakeholders to reach these goals. Research has confirmed that cooperation threatens to become dysfunctional without governance-management by the local government.[12] Especially, but by no means only, in States with a weak civil society, there is a danger that the interests of the weaker parts of society remain unheard in self-coordinated processes between different actors, leading to a pronounced imbalance in results. Local governance that leans on private companies and civil society organizations alongside other municipalities, is primarily stakeholder-governance. The local government remains solely responsible for the perspective of the citizenry as a whole.

21. However, local officials are confronted with the problem that cooperation and partnerships between a municipality and other actors are based on the fact that the capabilities and resources of the municipality are insufficient to reach the goal in question. This deficiency is apparent in the municipality's inability to control complex cooperative set-ups. The network of cooperative endeavours and performance processes threatens to become unclear for the elected representatives. As a result, there is a lack of democratically legitimate responsibility for network-governance. This is also the case when one or more of the actors (for example, a multinational company) is much more powerful than the municipality. Cooperation with private actors should not allow boundaries to become blurred to the extent that non-elected actors can influence political procedures.

22. How can we overcome this dilemma regarding local officials', especially councillors', inability to penetrate and oversee networks of cooperative arrangements while simultaneously acquiring the necessary political-democratic responsibility for such arrangements? In international discourse, the meta-governance concept prevails. Meta-governance has nothing to do with the officials of the municipality controlling the governance network from the outside, or hierarchically from top to bottom, nor has it anything to do with the establishment of regulatory frameworks. The meta-governance concept does not result in an attempt by the local government to slip in and gain control. Rather, meta-governance emphasizes the responsibility of the public network partners to initiate and maintain the network-governance within the network. It is evident that this does not occur by way of command and control but only through the creation of arenas of information, communication and negotiation as well as mutual evaluation in which democratically elected representatives are integrated and which account for the needs of the citizens.

[12] See note 9 above.